

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

MATTHEW R. DESCAMPS,
Defendant.

No. CR-05-104-FVS

ORDER DENYING MOTION TO
DISMISS ON SIXTH AMENDMENT
GROUND

THIS MATTER comes before the Court based upon the defendant's motion to dismiss on the ground that he has been deprived of his Sixth Amendment right to a speedy trial. He is represented by Jeffrey S. Niesen; the government by Stephanie Whitaker.

BACKGROUND

The defendant was arrested by deputy sheriffs on March 25, 2005. He was released from state custody on April 28, 2005. The next day, he was arrested on a federal warrant. On May 10, 2005, the government filed an indictment charging him with being a felon in possession of a firearm and ammunition. 18 U.S.C. § 922(g)(1). On June 29, 2005, the defendant's attorney, Christina Hunt, requested an evaluation of his competence to stand trial. 18 U.S.C. § 4241(a). She made the request over his objection. The Court granted her request. Thereafter, the relationship between the defendant and Ms. Hunt deteriorated. On

1 October 11, 2005, the Court allowed her to withdraw. Phillip Wetzel
2 was appointed to represent the defendant. He, too, questioned the
3 defendant's competence and arranged for a psychological evaluation.
4 The psychologist who performed the evaluation concluded that the
5 defendant has sustained brain damage that prevents him from forming a
6 constructive relationship with his attorney. According to the
7 psychologist, the damage is the result of a prior concussion and
8 prolonged use of controlled substances. On February 22, 2006, the
9 Court held a competency hearing. 18 U.S.C. § 4241(c). The Court
10 ruled that the government had failed to prove competence. 18 U.S.C. §
11 4241(d). As a result, the Court directed the Attorney General to
12 assess whether Mr. Descamps' could become competent. 18 U.S.C. §
13 4241(d)(1). The Attorney General sent him to the U.S. Medical Center
14 for Federal Prisoners in Springfield, Missouri. The defendant
15 appealed the Court's order. Attorney Philip Nino was appointed to
16 assist with the appeal. The defendant arrived at the Springfield
17 facility on March 23, 2006. Given his appeal, the staff of the U.S.
18 Medical Center was uncertain how to proceed. On October 12, 2006, the
19 Warden of the facility asked for an extension of the defendant's
20 commitment until November 17th. He said a report would follow shortly
21 thereafter. The Court granted the Warden's request. Although the
22 defendant left Springfield on December 6th, the staff did not submit
23 its report until February 2, 2007. The Court held competency hearings
24 on February 12th and February 27th. On March 26, 2007, the Ninth
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1 Circuit denied the defendant's interlocutory appeal of the Court's
2 order referring him for hospitalization. On April 2nd, the Court
3 ruled that the defendant is competent to stand trial. By then, the
4 defendant's relationship with Mr. Wetzel had deteriorated. On April
5 20th, the Court allowed him to withdraw. Jeffrey S. Niesen was
6 appointed to represent the defendant.

7 **RULING**

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9 The defendant claims he has been deprived of his Sixth Amendment
10 right to a speedy trial. In order to determine whether he is correct,
11 the Court must balance four factors. See *Doggett v. United States*,
12 505 U.S. 647, 651, 112 S.Ct. 2686, 2690, 120 L.Ed.2d 520 (1992) (“(1)
13 whether delay before trial was uncommonly long, (2) whether the
14 government or the defendant is more to blame for that delay, (3)
15 whether, in due course, the defendant asserted his right to a speedy
16 trial, and (4) whether the defendant suffered prejudice because of the
17 delay” (citing *Barker v. Wingo*, 407 U.S. 514, 533, 92 S.Ct. 2182,
18 2192, 33 L.Ed.2d 101 (1972))).

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20 The first factor is the length of delay. Over 27 months have
21 elapsed since the government filed the indictment. A delay of 27-plus
22 months is sufficient to require judicial review. *United States v.*
23 *Gregory*, 322 F.3d 1157, 1162 n.3 (9th Cir.2003) (“there is a general
24 consensus among the courts of appeals that eight months constitutes
25 the threshold minimum”).

26 The second factor is responsibility for the delay. Most of the

1 delay is attributable to the defendant's behavior. Given the manner
2 in which he behaved, Ms. Hunt became concerned that he was not
3 competent to stand trial. She felt compelled to seek a competency
4 evaluation. Once that occurred, delay was inevitable. 18 U.S.C. §
5 4241(a) ("The court *shall* grant the motion, or *shall* order such a
6 hearing on its own motion, if there is reasonable cause to believe
7 that the defendant may presently be suffering from a mental disease or
8 defect rendering him . . . unable . . . to assist properly in his
9 defense") (emphasis added)). Although some delay was inevitable, the
10 defendant substantially increased the extent of the delay. Not only
11 did he refuse to cooperate with either Ms. Hunt or Mr. Wetzel, but he
12 behaved discourteously. This impeded the Court's ability to resolve
13 the dispute over his competence to stand trial. It was not until
14 April 2, 2007, that the Court was able to rule. Had the defendant
15 been willing to work with Mr. Wetzel at that point, a trial could have
16 been held in short order; but he was not. Less than a month after the
17 Court determined that the defendant is competent to stand trial, a new
18 attorney was appointed. This delayed trial.

21 Although the defendant is responsible for most of the delay, he
22 is not solely responsible. At least some of the delay is attributable
23 to the government. The staff of the U.S. Medical Center for Federal
24 Prisoners took more than ten months to complete a report that should
25 have been completed in eight months or less. 18 U.S.C. §

26 4241(d)(1), (2) (the Court committed the defendant for a four-month

1 period and later granted a four-month extension of the commitment).
2 There are several reasons for the staff's delay in submitting its
3 report, one being that the defendant appealed the Court's order
4 directing the Attorney General to conduct an evaluation. Even so, at
5 least some of the delay appears to be attributable to the staff's
6 inability to complete an important task in a timely manner.

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8 The third factor is the defendant's assertion of his right to a
9 speedy trial. This is undisputed. From the beginning, he has
10 repeatedly sought to enforce his statutory right to a speedy trial.

11 The fourth factor is prejudice; in particular, prejudice that has
12 been caused by delay that is attributable to the government. *Cf.*
13 *Doggett*, 505 U.S. at 657-58, 112 S.Ct. at 2694 ("[t]he portion of the
14 delay attributable to the Government's negligence far exceeds the
15 threshold needed to state a speedy trial claim"). Here, the only
16 delay that is attributable to the government is that which occurred as
17 a result of the tardiness of the staff of the U.S. Medical Center for
18 Federal Prisoners in completing its work. A report that should have
19 been submitted to the Court in eight months or less was not submitted
20 for more than ten months. The difference between when the report
21 should have been submitted and when it was submitted -- a period of
22 between two and three months -- is chargeable to the government.
23 However, a delay of three months or less is insufficient to create a
24 presumption of prejudice. The defendant must show actual prejudice.
25 See *Gregory*, 322 F.3d at 1163 (22-month delay "not long enough to
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1 excuse Gregory from demonstrating actual prejudice"). In that regard,
2 he alleges that the delay has made him anxious, less able to control
3 his emotions, and less willing to follow his attorney's advice.
4 Furthermore, he alleges that he is having trouble remembering what
5 occurred on March 25, 2005, including the names of persons who might
6 be able to provide exculpatory evidence. He alleges that potential
7 witnesses have drifted away and that, even should he locate one, the
8 person's memory of the event likely will have faded with the passage
9 of time.
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11 Of the four factors listed above, two weigh in the defendant's
12 favor. Over 27 months have elapsed since the indictment was filed,
13 and during that period, the defendant has consistently sought his day
14 in court. Nevertheless, while these circumstances deserve careful
15 consideration, they do not weigh heavily in his favor because 27
16 months is not an excessive amount of time by Sixth Amendment
17 standards. See, e.g., *Gregory*, 322 F.3d at 1162 (22 months). The two
18 remaining factors weigh heavily against the defendant. By refusing to
19 cooperate with his first two attorneys, and by treating them in a
20 discourteous manner, he delayed by many months both a determination
21 that he is competent to stand trial and the advent of trial itself.
22 Granted, the government is not blameless; but the delay attributable
23 to the government's tardiness -- three months at most -- is small. If
24 the defendant has suffered any prejudice as a result of delay for
25 which the government is responsible (and it questionable whether he
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1 has), the prejudice he has suffered is too mild to give rise to a
2 constitutional violation. In sum, he has not been deprived of his
3 right to a speedy trial as guaranteed by the Sixth Amendment.

4 **IT IS HEREBY ORDERED:**

5 The defendant's motion to dismiss on the ground that he has been
6 deprived of his Sixth Amendment right to a speedy trial (**Ct. Rec. 273**)
7 is denied.

8 **IT IS SO ORDERED.** The District Court Executive is hereby
9 directed to enter this order and furnish copies to counsel.
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11 **DATED** this 4th day of September, 2007.

12 s/Fred Van Sickle
13 Fred Van Sickle
14 United States District Judge
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